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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

10 AUG 31 2006
at _____ o'clock and _____ min. _____ M
SUE BEITIA, CLERK

Attorneys for Plaintiff
JEANNETTE MILLER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JEANNETTE MILLER,

Plaintiff,

vs.

MAUI OCEAN ACTIVITIES, INC.,

THEODORE C. KING, BETH D.

KING, in personam, and MOA

VESSEL, in rem,

Defendants.

) CIVIL NO. 04-00441 BMK

) (In Admiralty)

)

) PLAINTIFF'S PRETRIAL

) STATEMENT; CERTIFICATE OF

) SERVICE

)

)

)

)

) Trial: October 17, 2006

) Judge: Hon. Barry M. Kurren

)

PLAINTIFF'S PRETRIAL STATEMENT

I. PARTY

This Pretrial Statement is submitted on behalf of Plaintiff Jeannette Miller who is presently 23 years old. She was 20 at the time of the subject injury.

II. JURISDICTION AND VENUE

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1333. Venue is properly laid in this district in admiralty, in that Defendants are doing business here. Jurisdiction and venue are not disputed.

III. SUBSTANCE OF ACTION

Plaintiff seeks damages under maritime law for personal injuries she sustained in a work-related accident on August 27, 2003. Defendants contend her maritime claims are barred by the exclusivity provisions of the Hawaii Workers Compensation Act.

IV. UNDISPUTED FACTS

Plaintiff fell and was injured on the Kailua-Kona boat launching ramp in the course and scope of her employment.

V. DISPUTED FACTUAL ISSUES

All other material facts are disputed.

VI. RELIEF PRAYED

Plaintiff seeks recovery for: (1) past and future medical expenses, which in the latest compilation total approximately \$15,650, (2) past economic loss (5-6 weeks off work) and impaired earning capacity, (3) past and future pain and suffering, (4) costs of suit, and (5) prejudgment interest in admiralty.

VII. POINTS OF LAW

Plaintiff asserts (and Defendants oppose) application of a principle of admiralty law settled in the Fifth Circuit, rejected in the Eleventh Circuit, and not yet directly addressed in the Ninth Circuit.

Plaintiff's principal case is Green v. Vermillion Corp., 144 F.3d 332 (5th Cir. 1998). The court held an employee not covered by either the Jones Act or the LHWCA could recover in negligence against his employer, despite state worker's compensation exclusivity:

An action for negligence has long been a vestige of general maritime law . . . Fidelity to the Supreme Court's and our own precedent requires that ***we hold that the exclusive remedy provision of the Louisiana Workers Compensation Act does not preclude*** Green from asserting ***his general maritime negligence claim*** against Vermillion for the non-fatal injuries he sustained during the course of his employment while upon navigable waters.

Green, 144 F.3d at 341 (emphasis added).

VIII. PREVIOUS MOTIONS

1. Plaintiff's Motion for Leave to File First Amended Complaint, filed April 14, 2005 – granted June 16, 2005.
2. Third-Party Defendant Hawaii Employers' Mutual Insurance Co., Inc.'s Motion to Dismiss Third-Party Complaint, filed August 15, 2005 – Stipulation to Dismiss without prejudice filed October 12, 2005.
3. Plaintiff's Motion for Leave to File Second Amended Complaint, filed August 25, 2005 – granted October 12, 2005.
4. Defendants' Motion to Continue Trial, filed December 5, 2005 – withdrawn December 14, 2005.

IX. WITNESSES

Non-Expert Witnesses

Anticipated Testimony

- | | |
|---|--|
| 1. Jeannette Miller
c/o Cronin Fried Sekiya Kekina &
Fairbanks
841 Bishop Street, Suite 600
Honolulu, HI 96813 | Plaintiff; will testify regarding
liability and damages, and other
relevant matters. |
| 2. Theodore C. King
c/o Frame Formby & O'Kane
Four Waterfront Plaza
500 Ala Moana Blvd., Suite 575
Honolulu, HI 96813 | Defendant; will testify regarding
liability and damages, and other
relevant matters. |

3. Beth D. King
c/o Frame Formby & O'Kane
Four Waterfront Plaza
500 Ala Moana Blvd., Suite 575
Honolulu, HI 96813
Defendant; will testify regarding liability and damages, and other relevant matters.
4. Jesse Kunewa
c/o Frame Formby & O'Kane
Four Waterfront Plaza
500 Ala Moana Blvd., Suite 575
Honolulu, HI 96813
Co-worker; will testify regarding liability and damages, and other relevant matters.
5. Douglas Rideout
c/o Frame Formby & O'Kane
Four Waterfront Plaza
500 Ala Moana Blvd., Suite 575
Honolulu, HI 96813
Co-worker and eyewitness; will testify regarding liability and damages, and other relevant matters.
6. Patrick Shand
74-5105 Kunakani Street
Kailua-Kona, HI 96740
Co-worker; will testify regarding liability and damages, and other relevant matters.
7. Jeffrey Watson
75-5812 Melelina Street
Kailua-Kona, HI 96740
Co-worker; will testify regarding liability and damages, and other relevant matters.
8. Michael Marchetti
HCR 2, Box 6646
Keaau, HI 96749
Co-worker; will testify regarding liability and damages, and other relevant matters.
9. Dana Davis
75-6009 Alii Drive, Apt. 52
Kailua-Kona, HI 96740
Co-worker; will testify regarding liability and damages, and other relevant matters.

Expert Witnesses

Anticipated Testimony

- | | |
|---|--|
| 1. Peter Woollett, M.D.
Kona Community Hospital
79-1019 Haukapila Street
Kealahou, HI 96750 | Plaintiff's physician; will testify as to his personal and professional background, training and experience; and on liability and damages and other relevant matters. |
| 2. William Jornlin, M.D.
UC Davis Medical Center
2315 Stockton Blvd.
Sacramento, CA 95817 | Plaintiff's physician; will testify as to his personal and professional background, training and experience; and on liability and damages and other relevant matters. |
| 3. Norman Lee Melnikoff, M.D.
UC Davis Medical Center
2315 Stockton Blvd.
Sacramento, CA 95817 | Plaintiff's physician; will testify as to his personal and professional background, training and experience; and on liability and damages and other relevant matters. |
| 4. Frank Cervantes, D.D.S.
Granite Dental Care
Douglas Blvd., Suite 110
Granite Bay, CA 95746 | Plaintiff's dentist; will testify as to his personal and professional background, training and experience; and on liability and damages and other relevant matters. |
| 5. Mark H. Holt, D.D.S., M.S.
1421 Secret Ravine Parkway, #121
Roseville, CA 95661 | Plaintiff's orthodontist; will testify as to his personal and professional background, training and experience; and on liability and damages and other relevant matters. |

Plaintiff reserves the right to call any and all witnesses identified by Defendants in their Pretrial Statement or other pleadings. Plaintiff further reserves the right to call impeachment/rebuttal witnesses and witnesses identified through further investigation or discovery, as appropriate.

X. EXHIBITS, SCHEDULES AND SUMMARIES

It is anticipated that all exhibits will be stipulated into evidence. Sponsoring witnesses are identified here only in the event it becomes necessary to have a witness identify and or authenticate the specific records in question.

	<u>EXHIBIT</u>	<u>RELEVANCE</u>	<u>SPONSORING WITNESSES</u>
1.	Video footage and Accident Statement of Douglas Rideout	Liability and damages	Douglas Rideout
2.	Medical records and bills of Kona Community Hospital	Liability and damages	Dr. Woollett and/or Custodian of Records
3.	Medical records and bills of U.C. Davis Medical Center	Liability and damages	Dr. Melnikoff or Dr. Jornlin and/or Custodian of Records
4.	Medical records and bills of Granite Dental Care	Liability and damages	Dr. Cervantes and/or Custodian of Records
5.	Medical records and bills of Mark H. Holt, D.D.S.	Liability and damages	Dr. Holt and/or Custodian of Records

Plaintiff reserves the right to introduce as exhibits transcripts and/or exhibits from all depositions taken in this matter not already listed above.

Plaintiff reserves the right to introduce as exhibits pleadings or discovery documents not already listed above.

Plaintiff reserves the right to introduce other portions of the above-mentioned exhibits as separate exhibits.

XI. FURTHER DISCOVERY OR MOTIONS

Two depositions remain to be taken.

XII. STIPULATIONS

Exhibits should be admitted by stipulation.

XIII. AMENDMENTS, DISMISSALS

None at this time.

XIV. SETTLEMENT DISCUSSIONS

Discussions appear to have reached impasse.

XV. AGREED STATEMENT

A statement on the date and place of the subject accident appears feasible.

XVI. BIFURCATION, SEPARATE TRIAL OF ISSUES

Not requested.

XVII. REFERENCE TO MASTER OR MAGISTRATE JUDGE

N/A.

XVIII. APPOINTMENT AND LIMITATION OF EXPERTS

Not requested.

XIX. TRIAL

Bench trial is set for October 17, 2006.

XX. ESTIMATE OF TRIAL TIME

Plaintiff anticipates putting on her case in 1-2 trial days.

XXI. CLAIMS OF PRIVILEGE OR WORK PRODUCT

None.

XXII. MISCELLANEOUS

Plaintiff anticipates calling her treating medical providers via live video-conference link, with the Court's approval.

DATED: Honolulu, Hawaii, August 31, 2006.



PATRICK F. McTERNAN
HOWARD G. McPHERSON
Attorneys for Plaintiff

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JEANNETTE MILLER,)	CIVIL NO. 04-00441 BMK
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Plaintiff,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
MAUI OCEAN ACTIVITIES, INC.,)	
THEODORE C. KING, BETH D.)	
KING, <u>in personam</u> , and MOA)	
VESSEL, <u>in rem</u> ,)	
)	
Defendants.)	
_____)	

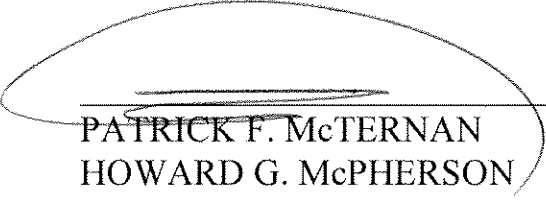
CERTIFICATE OF SERVICE

The undersigned hereby certifies that upon filing, a true and correct copy of the foregoing document will be duly served by means of U. S. Mail, first class postage prepaid, to the following:

JOHN O'KANE, ESQ.
MARK S. HAMILTON, ESQ.
Frame Formby & O'Kane
Four Waterfront Plaza
500 Ala Moana Blvd., Suite 575
Honolulu, HI 96813

Attorneys for Defendants
MAUI OCEAN ACTIVITIES, INC.,
THEODORE C. KING, BETH D. KING,
and MOA VESSEL

DATED: Honolulu, Hawaii, August 31, 2006.



PATRICK F. McTERNAN
HOWARD G. McPHERSON
Attorneys for Plaintiff